

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 905 OF 2003

The New India Assurane
Co.Limited.

... Appellants.

Versus.

M/s.Ema Lubes Pvt.Ltd.

... Respondents.

Shri M.G.Barve for the Appellants.

Shri Nitin Jamdar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. The Appeal is by the Defendants-Insurance Company.

There is a money decree passed by the trial Court which

has been confirmed by the Appellate Court.

2. Shri Barve the learned Counsel appearing for the Appellant submitted that admittedly the Appellant-Insurance Company had issued receipt in favour of the Respondent acknowledging receipt of premium and that itself amounts to acceptance of the offer and the contract of insurance came into force the moment the receipt was issued by accepting the premium. Shri Barve also relied upon statements made by the witness of the Respondent in his examination-in-chief. He submitted that even the Respondent/Plaintiff accepted that there was a contract of insurance between the parties on the basis of the premium accepted by the Appellant.

3. It is necessary to refer to the Written Statement filed by the Appellant in the trial Court. Paragraph

9(B) to (E) of the Written Statement read thus:

(B) However, the risk involved being a large one, the acceptance was required to be provisional and approved by the Competent Authority i.e. Divisional Manager. When the proposal was sent to the Divisional Office, it was pointed out that a deficit of premium of Rs.55/- is required to be made up for and, therefore, the Plaintiff, was advised to pay the difference of Rs.55/-

(C) In the meanwhile, the policy number 21 151602 01622 was allotted on 16.5.1994, though the policy could not be typed for want of approval.

(D) The Divisional Manager, conveyed the approval to accept the risk and issued the policy vide letter dated 27.7.1994. The Branch Manager then asked the concerned staff to type the policy.

(E) It, however, appears that the Staff had

misplaced the papers and forgot to type and issue the policy, the lapses to this effect were noticed only after the letter dated 1.11.1995, was sent by the plaintiff."

4. It is thus clear that the Appellant-Insurance Company itself came out with a case that as risk involved was very large the acceptance of the proposal could not have been made without approval of the Competent Authority i.e. the Divisional Manager. A case is made out that the Divisional Manager conveyed his approval on 27th July 1994 and the concerned staff members of the Appellants-Insurance Company forgot to type and issue the policy. It is pertinent to note that it is not the case of the Appellant that the approval was communicated to the Respondent-Plaintiff. Thus going by the case of the Appellant, on the day on which premium was accepted, the proposal was not accepted for want of approval. The Appellate Court has recorded that no evidence was led by the Appellant-Insurance Company. The so-called letter dated 27th July 1994 recording approval of the Divisional Manager is also not produced by the Appellant. When the Appellant-Insurance Company specifically came out with the case that there could not have been acceptance of the proposal without the approval of the Competent Authority, the burden was on the Appellant-Insurance Company to establish that the

approval was granted by the Divisional Manager. The said burden is not discharged by leading any evidence. The premium was accepted on 16th May 1994 and it is an admitted position that on that day no approval was granted by the Competent Authority. Therefore, unless evidence was led by the Appellants to show that the proposal was accepted by the Competent Authority, it is impossible to accept the submission made by the learned Counsel for the Appellant that the contract/policy was valid and subsisting.

5. He has referred to the admission given by the witness examined by the Respondents that the policy was received by the Respondent after the policy period was over. This admission is not helpful to the Appellant. This admission does not prove that there was approval given by the Competent Authority of the Appellant during the period of policy.

6. Reliance is placed on the Judgment of this Court reported in 2001 All M.R. page 1 (M/s.Deokar Exports Pvt.Ltd. v/s. The New India Assurance Co.Ltd.). The ratio of the said Judgment is not helpful to the Appellant for the simple reason that the Appellant-Insurance Company has come out with the case that on the date on which the premium was accepted, offer was not accepted as approval of the Divisional Manager was required.

7. The Appellate Court has recorded a finding in paragraph 18 of the Judgment that when the insurance company did not issue the insurance policy or the cover note or a slip or customary memorandum to signify that the proposal has been accepted. A finding is also recorded that a letter was sent by the Respondents to the Appellant on 21st December 1994 calling upon the Appellant to issue policy. There was no response to the said letter. There is an admission given in the Written Statement that the policy was not even typed. Therefore, the Appellant has failed to establish that there was acceptance of offer. In this view of the matter, no fault can be found with the decree passed by the trial Court directing the Appellant-Insurance Company to refund premium with interest.

8. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.